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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,002	03/26/2004	Brian E. Healy	J-3949	7734
28165 7590 10/16/2008 S.C. JOHNSON & SON, INC. 1525 HOWE STREET RACINE, WI 53403-2236			EXAMINER JACYNA J CASIMER	
			ART UNIT 3754	PAPER NUMBER
			MAIL DATE 10/16/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/810,002

**Applicant(s)**

HEALY ET AL.

**Examiner**

J. Casimer Jacyna

**Art Unit**

3754

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3, 5, 6, 17, 19-35, 40, 43-46 and 48-53 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5, 6, 17, 27, 30-35 and 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-26, 28, 29, 43-46 and 48-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 09/08/2008
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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1. Claims 3, 5, 6, 17, 27, 30-35 and 40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2/7/2007.
2. Upon further consideration, the indicated allowability of claims 24-26 and 48-53 are withdrawn in view of Flock as explained below.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 19-21, 24, 25, 28, 29, 43 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Flock (3,351,239). Flock discloses an actuator cap 10 for a container 25 with a main wall 29 that varies in cross section, an actuator member 55 that extends transversely at both terminal outer peripheral portions 61 and 59 that extend beyond a portion of the main wall at 31 as seen in figure 2 with the outer surface of seal 41 being slightly wider than the inside diameter of outlet 31 as claimed, but does not extend beyond the greatest lateral extent of the main wall at 30, a curved upright member 62 which is immediately adjacent the actuator, guides the actuator movement at 63, and surrounds and protects the actuator as claimed and has a curved outer surface that contacts a spaced housing at 36 in figure 3. In regard to claim 24, the spaced housing 36 includes an inner wall portion 40 that tapers at 42 to a discharge opening 41 as claimed. Claims 24 and 51 call for the discharge opening to be larger than "a radius" of the container which claim language includes any radius on the container. The opening 41 is slightly larger than the radius of the inside diameter of the

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container outlet as measured on line 28 in figures 2 or 3. Additionally, the radius of the curve connecting the container neck to the container wall 25 shown immediately above the end of the pointer for 27 in figure 3 has a radius that is smaller than the discharge opening 41. In regard to claims 25 and 52, Flock discloses that the movement of the housing 40 relative to the container causes the housing wall to contact the outer peripheral surface at 59 that displaces the valve actuating apparatus 55. In regard to claim 43, Flock discloses an actuator cap 10 for a container 25 with a main wall 29 that varies in cross section, an actuator member 61 that extends transversely and terminates at an outer peripheral surface that extends beyond a portion of the main wall at 31 as seen in figure 2, but does not extend beyond the greatest lateral extent of the main wall at 30, an upright member 36 which is immediately adjacent the actuator, guides the actuator movement with 38, 39 and encloses and protects the actuator as claimed and has a curved outer surface at the juncture of 35 and 36 with wall 35 contacting a spaced housing 14 and a gusset 57 that has an arcuate portion at 40. In regard to claim 48, the inner circumferential wall is not connected to any particular element wherein the actuator cap of Flock includes an inner circumferential wall that receives the valve stem 55 at 56 and an alternate second inner circumferential wall 62 that receives the valve stem 55 at 63. In regard to claim 49, the inner circumferential wall 62 contacts a rib 60 within the wall to engage the valve stem 55 as claimed. In regard to claim 50, the actuator includes a tapered flange 23 that is snap fit over the container 25 at 22.

5. Claims 22, 23, 26, 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flock (3,351,239). Flock discloses a combination substantially as claimed but does not disclose the specific claimed dimensions. However, one of ordinary skill in the art would have considered the actual dimensions of the container and actuator to be design considerations that are obvious to and well within the scope of knowledge of one of ordinary skill in the art.

6. Applicant's arguments filed 6/23/2008 have been fully considered but they are not persuasive. Applicant explains the nomenclature and operation of the claimed invention and then explains the nomenclature and operation of Flock and states that the two devices are not similar. However, Applicant's claim language is readable on the elements in the Flock apparatus even though the nomenclature is different and the function, structure and operation of the devices are different. An element that performs the function of an actuator and includes an outer peripheral surface that extends with respect to a main wall as claimed is readable on the claim language even if it is on a different type of device and has a completely different structure from that disclosed. A wall surrounding an actuator such as 40 or 62 assists in preventing inadvertent actuation because it presents an obstacle to a user or an object in directly contacting the actuator and necessitates the use of handle 48B. This prevents a user from accidentally bumping into the actuator to cause movement of the actuator.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/  
Primary Examiner, Art Unit 3754